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RECENT CONSTITUTION-MAKING IN THE UNITED STATES.

NORTH DAKOTA, SOUTH DAKOTA, MONTANA, WASHINGTON.

AN act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments, to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States, was approved by President Cleveland, February 22, 1889. This act provided that the Territory of Dakota should be divided on the line of the seventh standard parallel; that delegates having the qualifications of an elector in the respective territories should be chosen on the second Monday in May, 1889, pursuant to a proclamation of the territorial governors made on the fifteenth of the preceding April; and that delegates chosen, to the number of seventy-five in

each Territory, should meet respectively in Bismarck for North Dakota, in Sioux Falls for South Dakota, in Helena for Montana, and in Olympia for Washington, on the fourth of the following July, for the purpose of framing a State constitution for their respective Territories. The act further required that the constitution so framed should be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. Each convention was required, after organization, "to adopt the Constitution of the United States," and to provide, by irrevocable ordinances, save by the consent of the United States and the people of the new States—(*a*) perfect toleration of religious sentiment; (*b*) disclaimer forever of all right and title to certain lands known as Indian lands within the limits of the respective States, save as such right and title should hereafter be conveyed through the United States; (*c*) the assumption and payment of the debts and liabilities of the respective territories by their successors, the respective States; (*d*) the establishment and maintenance of systems of public schools free to all the children of the respective States, and free from sectarian control; and the delegates chosen to frame a constitution for South Dakota were to assemble at Sioux Falls to frame that constitution in accordance with their instructions indicated by the ballots cast for their election, which were to show, by the words printed upon them, whether or not the people of South Dakota wished to have re-submitted to them the Sioux Falls constitution of 1885, or a new constitution framed by the convention of 1889. The debts and liabilities of the Territory of Dakota were to be assumed by the two States organized out of it, according to the decision of a joint commission to be composed of members of each convention—*i. e.*, of North Dakota and South Dakota. This commission also was to prescribe the manner of dividing the property of

the territorial government between the two States. Every sixteenth and every thirty-sixth section of land in the proposed States was granted by the act for the support of common schools, and the lands so granted were never to be sold for less than ten dollars per acre. The sections covered by these numbers yet contained in Indian reservations were not granted. Upon the admission of the States fifty sections of the unappropriated lands within the States were to be granted for the purpose of erecting public buildings at the respective State capitals for legislative, executive, and judicial purposes. No lands granted for school purposes should ever be used for the support of any sectarian or denominational school, college, or university. The lands already granted to these four Territories for university purposes were confirmed as an additional grant, constituting in each case "the full quantity of seventy-two sections" to each State. The lands already granted to Dakota for asylums; for the penitentiary, 90,000 acres in each State, except South Dakota, which was granted 120,000 acres, and for the support of agricultural colleges, were confirmed. To the State of South Dakota were also granted, for the school of mines, 40,000 acres; for the reform school, 40,000 acres; for the agricultural college, 40,000 acres; for the deaf and dumb asylum, 40,000 acres; for the university, 40,000 acres; for State normal schools, 80,000 acres; for public buildings at the capital of the State, 50,000 acres; and for other educational and charitable purposes as the State legislature might determine, 170,000 acres—making in all 500,000 acres. A like quantity of land, for like purposes and in like proportions, was granted to North Dakota. To Montana were granted: for a school of mines, 100,000 acres; for State normal schools, 100,000 acres; for agricultural colleges, in addition to the grant already made for that purpose, 50,000 acres; for a State reform school, 50,000 acres; for a deaf and dumb asylum, 50,000 acres; for public buildings at the State capital, in addition to the grant before made, 150,000

acres. To the State of Washington were granted: for a scientific school, 100,000 acres; for State normal schools, 100,000 acres; for public buildings at the State capital, in addition to the former grant, 100,000 acres; and for State charitable, educational, penal, and reformatory institutions, 200,000 acres. To each State was a grant of $20,000 wherewith to defray the expenses of the constitutional convention of that State. Each State was erected into a Federal judicial district—Washington and Montana being attached to the ninth, and the two Dakotas to the eighth judicial circuit. Provision was made for the appointment of four additional United States district judges and other court officers, and the course of all cases of appeal or writ of error from the former territorial courts was fixed. Provision was made against any interruption of judicial business incident to the change from a territorial to a State condition. Each territory was to hold a special election on the first Tuesday of October, 1889, for the ratification or rejection of the constitution framed for it, and at the same election it was to choose a complement of State officials, and a representative to Congress, save South Dakota, which was to elect two Congressional representatives. In case of the ratification of the proposed constitution by the electors of the Territory, the legislature of the new State was to convene and choose two United States senators, who, with the representative in Congress, were to be admitted to the national legislature as soon as the State was formally admitted into the Union. The certificate of the vote cast on the first Tuesday of October was to be forwarded to the President of the United States, and if the constitutions and governments of the proposed States were republican in form, and the provisions of the enabling act had been complied with, it was the duty of the President to issue his proclamation announcing the result of the election in each State, and the proposed States which had adopted constitutions and framed State governments, as provided by the act, were to be deemed admitted by

Congress into the Union, under and by virtue of the enabling act, on an equal footing with the original States, from and after the date of the President's proclamation.[1]

The election of delegates to the constitutional conventions occurred in the four Territories in accordance with the provisions of the enabling act, and on the Fourth of July, 1889, the four conventions assembled—for North Dakota at Bismarck, for South Dakota at Sioux Falls, for Montana at Helena, and for Washington at Olmpia. In each of these cities the national holiday was observed with fitting ceremonies: a civic and military procession, speeches, and a participation in the exercises by the delegates to the

[1] The Territory of Washington was organized from a portion of the "Oregon Country," March 3, 1853, and given its present boundaries March 2, 1861. On the latter date the Territory of Dakota was organized, and given the present boundaries (of the two States), March 3, 1864. Dakota was formed out of the Nebraska Territory. Montana was organized as a Territory May 24, 1864, with its present boundaries.

The enormous area comprised within the new States is measured by a column extending (were the four States so arranged) 1570 miles east and west and 228 miles north and south. The actual distance from the eastern boundary of the Dakotas to the Pacific Ocean is 1235 miles. The respective areas of the States are: South Dakota, 76,600 square miles; North Dakota, 71,900 square miles; Montana, 146,080 square miles; Washington, 69,180 square miles—a total of 363,760 square miles, nearly eight times the area of the State of New York and nearly one-tenth of the entire area of the United States. A simple computation will show the imperial domain specifically granted by Congress as land grants for the support of public schools and other public institutions, public buildings for the State, etc., computing at the value of ten dollars per acre, to be worth $150,000,000, of which about $135,000,000 are for educational purposes alone. The school fund thus guaranteed to these States reaches the unparalleled amount, in millions of dollars—for South Dakota, 27; for North Dakota, 30; for Montana, 52; and for Washington, 25. There are large portions of these States excluded from the computation as belonging to Indian reservations, but the amount here computed is not far from correct, as much of the land will be sold for more than the minimum price of ten dollars per acre. The guarantee of the school fund is carefully formulated in each of the four constitutions.

The population of the new States was estimated by *The Morning Oregonian*, a conservative, reliable paper, October 7, 1889, as follows: North Dakota, 250,000; South Dakota, 400,000; Montana, 160,000; Washington, 300,000. It is not without interest to compare the estimates of 1889, before the admission of these new States, with the census of 1890 The census of 1890 gives the population as: North Dakota, 182,719; South Dakota, 328,808; Montana, 132,159; Washington, 349,390.

convention about to organize. The *personnel* of the conventions illustrates the peculiar character of the men called to frame these constitutions. The North Dakota convention consisted of 56 Republicans, 22 Democrats, and 1 Independent. The oldest member was sixty-five, the youngest twenty-seven, the average age thirty-nine and a half years. Fifty-two were born in the United States: Wisconsin furnishing 13; New York, 10; Iowa, 5; Ohio, 4; Maine, 3; Illinois, Connecticut, Indiana, Minnesota, and Vermont, each 2; Massachusetts, New Hampshire, New Jersey, and Michigan, each 1; New Brunswick, 1; Norway or Sweden, 6; Canada, 8; Scotland, 3; Ireland, 3; England, 2. Of American ancestry there were 23; of Norwegian, 8; of Irish, 12; of Scotch, 7; of English, 13; Scotch-Danish, 1; English-German, 1; Scotch-American, 2; German-Irish, 1; Dutch, 1. Twenty-eight were farmers, nineteen were lawyers, thirteen were bankers; four were in mercantile life, two were journalists, two lumbermen, one a judge, one a ranchman, one a physician, one an insurance agent, one an employé of a railroad. Seven were veterans of the Civil War; eleven had served as district or city attorneys; eleven had filled political offices; five had been teachers; and one a preacher. Thirty-one had received a common-school education; fourteen had completed a course in a high school or academy; four were graduates of normal schools; fourteen had graduated at college; and nine had completed a university course. The universities represented were: Wisconsin, 2; Michigan, 3; Iowa State, 2; Pennsylvania, 1; Union, 1. The colleges represented were: Beloit, 2; Wabash, 1; Hanover (Pa.), 1; La Crosse, 1; Allegheny, 1; Milton, 1; Marietta, 1; Heidelberg (O.), 1; Williams, 1; Iowa College, 1; National Normal, 1.

The Montana convention consisted of 40 Democrats, 34 Republicans, and 1 Independent (Labor). The oldest member was sixty-nine, the youngest twenty-eight, the average age forty-four and one-fourth years. There were natives of New York, 10; Maine, 9; Kentucky, 7; Ireland, Illinois, Ger-

many, 4 each; Missouri, 5; Pennsylvania, Indiana, Virginia, Massachusetts, 3 each; Vermont, 2; Tennessee, Ohio, Kansas, England, Iowa, Michigan, Wisconsin, Delaware, 1 each; Minnesota, 3; Canada, 2; and New Jersey, 1. Two were farmers, twenty lawyers, four bankers, twelve merchants, twelve engaged in mining, two physicians, seven stock-growers, three engaged in real estate, two school teachers, two capitalists, one contractor, one foundryman, one journalist, one county clerk. Four were veterans of the Civil War, sixteen had been members of a State or territorial legislature, one had been a governor of the Territory, one its delegate to Congress. All had received a public school education; six had pursued courses in an academy or high school, eight had graduated at college, and six at some university. The universities represented were: Iowa State, 1; Pennsylvania, 1; Michigan, 1; Transylvania, 1. The colleges: Hamline, 1; Union, 1; Tubash, 1; Columbia, 1; Bowdoin, 1; Georgetown (Ky.), 1; Masonic, 1; West Point Military Academy, 1.

The Olympiac onvention was composed of seventy-five delegates, of whom twenty-one were lawyers, thirteen were farmers, six were merchants, six were physicians, five were bankers, four were stock-men, and three were teachers. There were two real estate dealers, two editors, two hop-growers, two loggers, two lumber-men, one preacher, one surveyor, one fisherman, and one mining engineer. Ten were veterans of the Civil War. The average age of the members was nearly forty-five years, and their nativities were twenty-five in number. Ten of the delegates were born in Missouri, eight in Ohio, seven in New York, seven in Illinois, five in Scotland, four in Pennsylvania, four in Kentucky, three in Indiana, three in Michigan, three in Germany, two in Tennessee, two in Ireland, and one each in North Carolina, New Brunswick, Massachusetts, Wisconsin, Ontario, Connecticut, Iowa, New Hampshire, Wales, Nebraska, California, and Washington Territory. The convention was composed of forty-three

Republicans, twenty-nine Democrats, and three Independents.

An examination of the detailed facts concerning the *personnel* of the three conventions specially described shows: (*a*) That nearly all the members of the conventions were from States immediately east of the new States; (*b*) that the members were all fairly well educated, and that many of them had pursued courses of study in institutions of learning widely famed; (*c*) that a large number of the delegates had received legal training, and many had held important legal offices; (*d*) that, in the Montana convention especially, was a large membership possessing a varied experience in legislative work. Many of the delegates had belonged at one time to legislatures in the Eastern States. (*e*) That the members represented in their various occupations the principal interests of modern society, and particularly the interests of their own Territory; (*f*) that the majority of the delegates were young men, less than forty years of age; (*g*) that none of them, except one delegate to the Washington convention, were natives of the Territory for which they were forming a State constitution; and not of least importance, although the fact is not brought out in the notes, the conventions were composed of men who had been highly successful in life.

The most elaborate of the four constitutions is that of South Dakota, with which, for convenience, the other three constitutions will be compared, article by article.

Each constitution opens with a preamble which declares that the people of the State, "grateful to Almighty God for civil and religious liberties," do ordain and establish the constitution. South Dakota incorporates the preamble of the national Constitution, and Montana refers to the enabling act of 1889.

The name and boundary of each State are distinctly set forth, the territorial boundaries being confirmed.

The principles of the Declaration of Independence, with which the constitutions were required by the enabling act

to accord, are embodied, as they have repeatedly been embodied, in the Bill of Rights contained in the several constitutions. Thus these new constitutions embody the civil and political principles common to the American State constitutions and fundamentally set forth in the amendments to the national Constitution. The provisions in the new constitutions differing from provisions common to the constitutions of the older States are: that the decision of civil cases may be made by three-fourths of the jury in any court; private property shall not be taken for public use, or damaged without just compensation, as determined by a jury, which shall be paid as soon as ascertained, and before possession is taken; no distinction shall be made between resident aliens and citizens in reference to the possession, enjoyment, or descent of property (S. D.); neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever exist in the State (N. D.); and a grand jury shall consist of seven persons, drawn and summoned at the discretion of a district judge, and the concurrence of five members of the jury is necessary to find an indictment (Mont.).

In their constitutional provisions the States go in pairs: North and South Dakota, Montana and Washington—a result not strange when the geographical position, the natural resources, the economic interests, and the influence of the constitutions of neighboring States are considered. Thus the influence of the constitution of California (1879) is perceptible in the constitutions of Montana and Washington, and that constitution was repeatedly quoted in the conventions of those States. The Dakota conventions were influenced by the constitutions of Illinois, Wisconsin, Michigan, and Minnesota, and, generally speaking, by the constitutions of those States with which the delegates, by previous residence, were familiar, or the Territory with which, by present economic interests, they were concerned.

The stream of population in this country has moved in

three great currents: the northern, from New England, New York, and Pennsylvania, along the line of the forty-second parallel. In the early years of the century this course was a convergence of smaller streams from various parts of New England, at Albany, thence westward along the bridle path to Utica, Syracuse, Rochester, Buffalo, Erie, Cleveland, Chicago. The "main road" from Boston to Chicago is the original line of this current, which, by reason of the increase of travel and transportation, has been paralleled by the Erie Canal and the sail and steamboat lines of the Great Lakes; and later, by the several railroad lines—the New York Central, the West Shore, the Lake Shore and Michigan Southern, the Canada Southern, and their connecting lines, which, connecting at Chicago with the trunk lines of the Northwest, have given to the entire northern half of the United States a uniform and distinct character in language, customs, and laws. The width of this northern stream is plainly marked by the northern boundary of the United States, and by a varying line of settlements on the southern edge, of which the principal are from Easton to Franklin in Pennsylvania; Columbus, Ohio; Indianapolis, Indiana; Springfield, Illinois; the southern boundary of Iowa; Kansas City, and thence northwestward, in scattered settlements, including a portion of northern California, northern Oregon, and northern Washington. All the States included within this area were settled by people from the older Eastern States, especially New England, New York, Pennsylvania, Ohio, Indiana, and Illinois, the western State for the time being taking its earliest settlers from the States directly to the east.

The second current of population, which may be called the Virginia current, has moved westward and southwestward, over an area extending from the Potomac River to the northern boundary of North Carolina on the east, and widening, as it courses westward, to the Ohio River on the north, including the State of Missouri, a portion of Kansas

and Colorado, and thence to the Pacific, excluding a portion of Northern California. Its southern boundary extends from the Carolinas southwestward, including the greater part of Georgia, Alabama, and the States and Territories directly west of the eighty-third meridian from the thirty-first to the forty-first parallel. Within this area the States first settled have contributed to the population of States immediately west of them, imparting to all the States and Territories within this zone of settlement a character of general uniformity.

The third and more recent line of movement has been along the Atlantic seaboard, beginning at various ports along that line, but specially at ports receiving large numbers of immigrants, and continuing from point to point along that line from Portland, Maine, to New Orleans, and the eastern towns of Florida, also to Galveston and Austin, Texas, and thence westward into the Territories of New Mexico and Arizona, into Southern California, and thence northward into Oregon, Washington, and Montana. This line of population-movement has been marked since 1865, and has been intensified and widened by the rapid construction of railroads in the general direction named.

Along the northern or New England line of population-movement have also moved the millions of immigrants from European countries in the corresponding latitude—Germany, Scandinavia, Austria, Russia, and the British Isles. Along the middle or Virginia line moved a native population, chiefly from the older Southern States, which spent its force at the foot of the eastern slope of the Rocky Mountains. The Virginia stream has been second in size to its northern companion. The recent coast stream has combined both Northern and Southern elements, and foreign elements, and reaching Washington and Montana by a backward flow, presents for the first time in our national history a meeting of Northern and of Southern elements north of the latitude of Kansas. The present population of Montana is the proof that the best lands have been taken in this

country, and that population is for the first time returning toward the East. The nativity of the members of the four conventions illustrates the nativity of the inhabitants of the four new States. The census of 1880, with which as to nativities the last census substantially agrees, shows that Dakota received from States north of Maryland and east of Dakota, 52,700 persons; from States south of Pennsylvania and east of the Mississippi, 2200; from the area west of Dakota and north of Indian Territory, 1100; from the area of the United States remaining, 2000; its native population being 17,796; that is, a resident population composed of persons who were born in that part of the United States comprised in the New England area and influence, 71,596; in the Virginia area and influence, 11,786. Of the foreign population, consisting in the aggregate of 51,795 persons, 51,135 were natives of countries in Europe north of the latitude of Venice. The census shows similar nativities for the population of Montana and Washington, excepting one modification, which also proves the truth of the principle that civil institutions follow lines of equal temperature. In Montana and Washington is found a larger proportion of population from the Southwestern and South Central parts of the United States, especially from the State of Missouri. It is well known that the isothermal lines of the United States indicate a climate in Washington and western Montana similar to that of the Mississippi valley in the area of Missouri. The population of the new States, the ideas incorporated into their constitutions, and their civil government are an illustration of the laws of climate as affecting human affairs. For instance, the provision relative to slavery in the North Dakota constitution, a quarter of a century after the abolition of slavery in the United States, is found in the constitution of New Mexico (1889); a common provision which illustrates the supremacy of a national idea, which has been incorporated into the national Constitution, and which has become authoritative west of the Mississippi

river in the actual opinions of the people, largely because of the immigration of persons from the East whose opinions on that subject were intensified by events in which they participated a generation ago. The provision in a State constitution against slavery so long after its abolition, is a passing proof of the persistency of political ideas. When the North Dakota constitution was framed under the enabling act of 1889, it recognized the national Constitution as "the supreme law of the land," and thereby incorporated the thirteenth amendment to the National Constitution. The new State constitutions illustrate in many of their provisions this persistency of political ideas in this country. Perhaps the most striking illustration of all is the great length of the constitutions themselves, by which they become the residuum of what may be denominated the accepted political experience of the people in their civil life as citizens of an American State. An exhaustive examination of these constitutions would show the persistency of every political and civil idea which has prevailed from New England westward since the birth of the Nation.

The journals and debates in State constitutional conventions held in all the States which are situated in the area of the country comprised in the New England zone—New England, New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Kansas, Nebraska, Colorado, Nevada, California, and Oregon—comprise a political literature whose theme is the development and differentiation of fundamental political ideas, from time to time, according to the exigencies of public affairs. All the constitutions of these Northern States, both those which now are in force and those which have formerly been in force, are of one class, and contain a body of provisions essentially alike. The type is that of Massachusetts and Pennsylvania, modified as it moves westward. A consideration of the climatic and sociological laws which have determined the character of the population of the new States explains the cause of the principal differences

between these new constitutions, and, *inter alia*, why they fall into two groups, the two Dakotas forming one and Montana and Washington forming another. The second group has received a population from a different source from that which fed the Dakotas—Montana and Washington comprising within their population a larger percentage of persons from the South and the Southwest than is found in the Dakotas.

The State of Missouri first affected the organization of another State in 1855, when the admission of Kansas was a national issue. Oregon, four years later, was admitted as a State, and its population was largely composed of people from Missouri. Again, the influence of Missouri is shown in the organization of Washington and Montana, which, taken together, contained in 1880 four times as many persons born in Missouri as were of that nativity in the two Dakotas. In general terms, the difference between the Dakotas, and Montana and Washington, may be stated, so far as population is concerned, to consist in the difference which exists between the people of the United States inhabiting States north of Mason and Dixon's line and the Ohio River, and people inhabiting the Mississippi valley south of the northern boundary of Missouri and west of the meridian of Pittsburg. The Datokas are populated from the Northern and Eastern States; Montana and Washington from the Central and Southwestern States.

Each State elects a legislature composed of two houses, called the senate and the house of representatives. Legislative sessions are biennial. In the four States representatives are chosen for two years. South Dakota chooses her senators for two years, but the three other States elect senators for four years. In South Dakota, North Dakota, and Washington there is no distinction in principle between the system of districting for senators and that for representatives—a district for either division consisting of "a compact and contiguous area;" North Dakota having only one geographical division, into thirty-one districts,

among whose electors are distributed its thirty-one senators and its sixty-three representatives. Washington is divided into twenty-four senatorial districts, electing thirty-five senators—a senatorial district consisting of a county or a group of counties. Each county constitutes a representative district, and there are seventy representatives elected in the thirty-four counties. South Dakota provides for forty-one senatorial and fifty representative districts, electing forty-five senators and one hundred and twenty-five representatives. Montana alone, of the four States, followed the principle obtaining in the Congress of the United States, where each State is equally represented in the Senate and proportionally represented in the House. Montana constitutes each county a senatorial district with one senator, and each county is represented in the lower house according to its population. The Montana legislature consists of sixteen senators, one from each county district, and fifty-five representatives, apportioned among the sixteen counties. The number of members of the legislature is fixed in each constitution.

The constitutional qualifications for membership to the legislature in Washington are, being a citizen of the United States and a qualified voter in the district for which the member is chosen. Montana requires the additional qualifications of twelve months' residence, and that a person be twenty-four years of age if he be a candidate for the senate. North Dakota requires the candidate for the senate to be twenty-five years of age and two years a resident. South Dakota requires the age of twenty-five years and two years' residence of the candidate for either house. He must also be a citizen of the United States. South Dakota excludes from eligibility to legislative office any person "convicted of bribery, perjury, or other infamous crime," or who has not accounted for any public moneys due from him. Persons holding office under the State, the national government, or any foreign government, excepting persons holding the office of notary public, of justice of the peace, and

that of postmaster whose annual compensation does not exceed $300, are ineligible to the State legislature. The provision relative to the ineligibility of judges, clerks of courts, State officers, and Federal officers is common to the constitutions of the Dakotas and Washington.

Save that of Washington, each constitution provides for a State census in the year 1895, and decennially thereafter. North Dakota and Montana re-district after each census, *i. e.*, every five years; South Dakota re-districts only after the Federal census. Provisions common to the legislative departments in the constitutions of other States are common to the new constitutions, such as the organization of the houses; power over members; journal; adjournment; oaths of members; compensation of members, and their rights and privileges. Montana follows the national Constitution in requiring money bills to originate in the lower house; the Dakotas and Washington allow any bill to originate in either house. This partial obliteration of one of the traditional differences between the two branches of the legislature illustrates one of the tendencies of the present phase of political thought to institute one legislative house instead of two, an idea carefully and earnestly considered in the North Dakota convention, and suggestive of the popular distrust of State legislatures, which may be said to characterize a large portion of the American people at the present time.

The work of the four conventions brings into sharp relief the essential difference between the tendency and the character of political changes in England and in the United States. In England every reform in government for a thousand years has had for its immediate purpose the limitation of the powers of the executive; in the United States, since 1776, the opinion has steadily grown that it is safer to limit the powers of the legislature and to increase the powers of the executive. Englishmen distrust the Crown and grant almost unlimited powers to Parliament; Americans distrust the legislature, especially their

State legislatures, and give great powers to their President and to their governors. The details of these four constitutions illustrate this fixed tendency in American politics. The articles in the new State constitutions on the "Legislative Department" are long and detailed. They seem to be composed by the framers in order to delare what the respective State legislatures cannot be permitted to do. The principal prohibitions on the legislature are: on enacting any private or special legislation; on extinguishing or releasing the obligations of corporations or of individuals to the State; on legislative bribery; on personal or private interest in a bill in any member; on irregular form in framing bills; on appropriations of moneys; on performing legislative functions by deputy; on loaning the credit of the State to corporations; on authorizing lotteries; and on entertaining money bills during the last hours of the legislature. The perusal of these new constitutions suggests that the people have lost confidence in their State legislatures, and that the conventions, responsive to this feeling, have sought to anticipate great evils by limiting the powers of the legislature, or by substantially limiting them in declaring by what procedure the legislature shall act, on what it shall not act, and to what extent it may act. The chief limitations on the legislature are with respect to special or private legislation, corporations, political corruption among members, taxation, and power to use the credit of the State. The provision common to the four constitutions on special legislation is substantially a statement of the evils from which the older States have suffered. An examination of any of the later State constitutions will reveal what these evils are. Whether it is better to limit a legislative body by specifying on what subjects legislation is forbidden, or to constitute the State legislature of such men as are capable of interpreting the essential interests of the State, and of discriminating between proposed legislative remedies, is a question on which men differ. At the present low ebb of ability and

trustworthiness in State legislators, a condition for which the people themselves are responsible, the only escape from legislative evils seems to lie in the direction of sharp limitation on the powers of the legislature. At least, recent constitutional conventions have attempted no other remedy. Short terms, rotation in office, small salaries, political bossism in State politics, concentration of interest and powers in the national legislature, and industrial enterprises and business activity among the people which have tempted them to allow public treasures to be stolen, that the private citizen might be left in quiet to pursue his own profitable occupation, are among the causes which have produced the present distrust of State legislatures, and the evident effort to tie their hands so as to save the State from violence. South Dakota states the principal inhibitions against special legislation in eleven clauses, naming forty-five examples; North Dakota in thirty-five clauses specifies some ninety examples; Washington in eighteen clauses and Montana in one elaborate section provide as many more examples.

When a provision is at last introduced into a State constitution, it is proof that the evils against which it is directed are of long standing, and have become almost paramount in the State. The sections on the "corrupt solicitation of members of the legislature," almost identical in language in the four new constitutions, suggest the alarming hold of such evils in State legislation in this country, and the evident distrust of the people that their representatives will be able to withstand them. The evident purpose of the sections is to prevent the evils of lobbying.

The executive power is vested in a governor, elected in the two Dakotas for a term of two years; in Montana and Washington for a term of four. Washington requires the candidate for governor to have the qualifications of an elector in that State; the three remaining States require him to be thirty years of age and a citizen of the United States. Montana and South Dakota require a two years'

residence; North Dakota a residence of five years. The Dakotas and Montana declare the governor to be ineligible to any other office during his term as governor; a suggestive provision as indicating an effort of the convention to diminish the abuse of political influence in elections. It is now considered in many States of the Union that the office of governor is a stepping-stone to that of United States Senator; early in the present century the United States senatorship was considered a stepping-stone to the office of governor.

The framers of these constitutions set limits to executive power. They give the governor some of those powers common to the office in this country for a century: the power to convene the houses; to send an annual message; to veto bills; to act as commander-in-chief of the State militia; to execute the laws. They empower him to veto "the section or sections, item or items," of a bill to which he has objections. Washington and Montana provide that he may veto a portion of any bill; the Dakotas provide for such a veto only in case of a bill making appropriations.

In the exercise of the pardoning power, the governor is limited in South Dakota and in Montana by the action of a board of pardons, consisting in Montana of the secretary of State, the attorney-general, and the State auditor, and in South Dakota of the presiding judge, the secretary of State, and the attorney-general, to which board the governor can only make recommendations. In North Dakota and in Washington the pardoning power is vested in the governor "under such regulations and restrictions as may be prescribed by law." In South Dakota the governor may remit fines and forfeitures, grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment; in all cases where the sentence of the court is capital punishment, imprisonment for life, or a longer term than two years, or a fine exceed-

ing $200, the governor can only recommend to the board of pardons.

Against "corrupt solicitation" of the governor, or his abuse of his official privileges to influence any member of the legislature in any question or matter, the constitutions of the two Dakotas make express and severe provision, in language nearly alike. The introduction of such a saving clause in a State constitution suggests a lamentable experience in the older States of infidelity to public trust in the office of the chief executive of a State. The absence of such a provision from the constitutions of the other two States may be explained, perhaps, by the infrequent occurrence of gubernatorial infidelity in those States after whose constitutions the constitutions of Washington and Montana were modelled. An act so criminal in its nature would not be anticipated in a State constitution, and an elaborate clause guarding against so serious an evil would be introduced only after the actual existence of flagrant evils in the older States. It is seldom that the governor of a State offends by taking a bribe; seldom that the bribery of members of the houses can be proven. But the presence of elaborate sections intended to prevent legislative and executive corruption is most significant, and evidence of the effort of the conventions to anticipate so direful evils in the new States. Whether such corruption can be prevented by anticipating it in constitutional provisions, or whether the cure is to be found only at the polls, is an unsettled problem.

In fixing the salaries of the governors, South Dakota grants $2500, which may be increased by the legislature to $3000; North Dakota, $3000; Washington, $4000; and Montana, $5000 per annum. The relative salaries of all officers in the four States is fairly indicated by the salary of the governors. The farming influence in the Dakota conventions favored low salaries; the mining influence in the two other conventions favored higher salaries. North Dakota and Montana provide that the salary of the governor may be

changed by the legislature, and Washington provides that his salary shall never exceed $6000 per annum. It may be said that the difference between the Dakotas and Montana and Washington, in opportunities to accumulate wealth and the difficulty on that account in finding men to stand candidate for the office of governor, because the profits of private business far exceed the profits from public office, would naturally cause a marked difference in the salaries paid State officials. In other words, it may be said that it is as difficult to make an annual income of $2500 in South Dakota as one of $4000 in Washington or of $5000 in Montana.

The administrative offices provided for in the four new States are similar. The Washington constitution provides that the legislature at its discretion may abolish the offices of lieutenant-governor, auditor, and commissioner of public lands. A peculiar provision in these constitutions, and one which marks a change in American political thought, is concerning the manner of choosing the administrative officers of the State. This change is shown in the North Dakota constitution, which provides that the secretary of state, the auditor, the treasurer, the superintendent of public instruction, the commissioner of insurance, the three commissioners of railroads, the attorney-general, and the commissioner of agriculture and labor shall be elected by the qualified electors of the State at the times and places of choosing members of the legislative assembly. In the four States all the administrative officers are thus elected: a suggestive change from the custom under the older State constitutions. In the first State constitutions all the administrative officers were appointed by the governor; in many of the States that manner of choice still prevails. In others, some of these officers are appointed, some elected, as in Pennsylvania. The change to an election of them all indicates a "triumphant democracy."

There has been a long struggle in many States between the adherents of an elective and those of an appointed judiciary.

It may be admitted that the system of appointed officials in State governments is decaying, and doubtless the new State constitutions of the future, whether in new or in old States, will embody the system now incorporated in the constitutions of the four new States. The reason for the change from an appointed to an elective body of State officials is complex. Popular disappointment in the operation of the State governments, and the decay of popular interest in them; distrust of the executive, who, by all traditions, is entitled to appoint those who assist him in the administration of the State government; and the intimate desire of the electors to choose for themselves every representative of their interests, are among the direct causes of this change. Whether the civil service is as efficient under the control of such officers elected as under the control of such officers appointed is not a settled question. Experience in the national government seems destined to be paralleled by an experience under a totally different system in the State governments. For instance, it is problematic whether a superintendent of public instruction elected by the qualified voters in a State will be as competent a man for that office as one appointed by the governor of the State. Under the present tyrannic political conditions, there is danger that the superintendent of public instruction may be more astute as politician than as educator. Experience in some of the older States has repeatedly revealed that under an elective system a superintendent of schools often knows more about politics than about pedagogy. Not only are the administrative officers elected, but they are elected for short terms, and it may be confidently expected that the system of rotation in office, the almost inseparable concomitant of a short term, will cripple the civil service of the new States.

Among the administrative offices are several of economic significance, as those of insurance, railroad, agriculture and labor, prison, and public land commissions. The first State constitutions knew nothing of such offices, because

the people of the State then knew nothing of the complexity of modern social, political, and labor interests. Legislatures are now compelled to avail themselves of the reports of experts, or *quasi* experts, in order to enact laws which may remotely ameliorate the conditions of the people of the State. When are considered the demands upon the modern legislature, and the character of that legislature, according to the confessions of the American people in their State constitutions, the tendency to short legislative sessions once in two years is expressive of a hope of escape from both "over-legislation," which is merely the activity of zealous but, as is sometimes the case, incompetent men, and inadequate legislation, which is the confession of mere politicians. It may be that the creation of bureaus in the modern State government is practically the solution of the problem how to escape the danger of a session of the legislature; but it is only by long experience in the preparation of economic statistics, and by patient expert examination of economic conditions, that the work of such bureaus and commissions can become of any value whatever to the people of the State. It is to-day impossible to obtain from any State government a complete and trustworthy record of the economic condition of that State, either during a recent or a remote time. The celebrated Massachusetts reports, most admirable as they are, are incomplete: a fault by no means due to the commissioner of labor of that State, but to the inadequate provision made by the State itself for the preservation of economic records. Only when a State makes provision in its constitution for the exhaustive collection of all kinds of knowledge requisite to the complete exposition of the character of the State and its people, according to a continuous system, even faulty rather than spasmodic, can the reports of commissions and bureaus have value. The conventions that framed the new constitutions made no adequate provision for the collection of such knowledge.

Subject to the uncertainties of politics, it cannot be expected that the knowledge gathered by the various administrative officers will possess either accuracy or relevancy.

It is evident that these constitutions limit both the powers of the legislature and of the executive, and retain much power in the hands of the electors. Experience alone will demonstrate to the people of the new States the wisdom or the folly of attempting to conduct a State government so directly by the electors themselves. These constitutions mark a step toward a pure democracy characteristic of a society somewhat dissatisfied with the course of politics. The work of the four conventions is an indirect blow at that system of representative government which has had its course in the older States almost from their origin. It is a modern application of the principle quoted in the national Constitution, that all powers not delegated remain in the people. To any objections raised against the elective features in these constitutions, it may be said that by making the offices elective the responsibility of the people is brought home to the electors, and the intelligence of that body is necessarily sharpened. Many American citizens will watch with keen interest the practical operation of the system of State government under these new constitutions. Ample provision is made for their amendment, and experience alone will dictate the terms of amendment if demanded.

The judicial power of the new States is vested in the Senate, sitting as a court of impeachment, in supreme courts, in superior (district or circuit) courts, in justices of the peace, and in municipal courts. The judiciary of each State differs from that of either of the other three. The South Dakota supreme court has appellate jurisdiction only, except in specially provided instances, co-extensive with the State, and it has a general superintendence and control over all inferior courts under regulations and limitations prescribed by law. The judges of this court, at present three in number, are required to be men learned

in the law, at least thirty years of age, citizens of the United States, and residents of the district in which they are elected. Under the first election the supreme court judges were elected for a term of four years, but at subsequent elections the term is to be for six years. The annual salary of the judge is $2500, which may be increased by the legislature to $3000. Two terms of the supreme court are held at the seat of government each year. The court has power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction, and other original and remedial writs, with authority to hear and determine the same according to law; but no jury trials are allowed in the court; in proper cases questions of fact being sent to a circuit court for a trial before a jury. A majority of the supreme court judges constitute a quorum, and the number of the judges may by law be increased to five. The court has a clerk, and a reporter appointed by the court, to hold office at the pleasure of the court. The reports are published and distributed according to legislative provision, and an evil complained of in some of the older States is anticipated by the provision that no private person or corporation shall be allowed to secure any copyright to such decisions, "but if any copyrights are secured, they shall inure wholly to the benefit of the State." In North Dakota, cases requiring a jury trial are sent to a district court for trial. Unlike the South Dakota provision, for judicial districts, the three supreme court judges are elected at large for the term of six years, and their salaries are to be fixed by the legislature. The court holds three sessions each year—one at the seat of government, one at Fargo, and one at Grand Forks. Whenever the population of the State equals six hundred thousand, the legislature may increase the number of the supreme court judges to five. Vacancies in the court are to be filled by the governor until a judge can be chosen at the next regular election. A judge interested in a case is forbidden to sit in that case. The influence of the lawyers in the convention caused a

provision to be inserted in the constitution that it is the duty of the court to prepare a syllabus of the points adjudicated in each case, to be concurred in by a majority of the judges of the court, and prefixed to the published reports of the case: a provision expressive of the common wish of attorneys-at-law respecting the supreme court in any State. The syllabus of the case is usually prepared by the reporter, and often misses the essential points in the decision. The powers of the supreme court in the two Dakotas are similar. In Montana, the supreme court, which is constituted with powers similar to the Dakota court, may summon a jury according to law. The judges of the court are elected at large for a term of six years, and they are required to have qualifications common to those required in the Dakotas. The membership of the court may be increased to five, and three terms of the court are held annually at the seat of government. The salary of a supreme court judge is $4000 per annum. The supreme court of Washington consists of five judges, each elected at large for a term of six years. The annual salary of the judge is $4000; but the salary and membership of the court may be increased at the discretion of the legislature. The clerk and the reporter of the court are appointed by the court to hold office during its pleasure. Provision is made for separate departments of the supreme court at the will of the legislature. The court has original jurisdiction in *habeas corpus* and *quo warranto* and *mandamus* as to all State officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction does not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy does not exceed the sum of $200, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. It has power to issue writs of *mandamus*, review, prohibition, *habeas corpus*, *certiorari*, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of its judges has

power to issue writs of *habeas corpus* to any part of the State upon petition by or on behalf of any person held in actual custody, and make such writ returnable before himself, or the supreme court, or any superior court or judge of a superior court. In South Dakota the governor has authority to require the opinions of the judges of the supreme court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions.

The courts immediately inferior to the supreme court in the new States are called circuit courts in South Dakota, superior courts in Washington, and district courts in North Dakota and Montana. In South Dakota are eight judicial circuits, in each of which one judge of the circuit court is elected for four years, at an annual salary of $2000, which may be increased by the legislature to $2500. This court has original jurisdiction of all actions and causes, both at law and in equity, and such appellate jurisdiction as may be conferred by law, consistent with the constitution, the legislature being empowered to limit such jurisdiction as to value, amount, and grade of offence. The court and its judges have jurisdiction and power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction, and other original and remedial writs, with authority to hear and determine such cases as arise under those writs. The legislature may increase the number of districts and judges, but cannot form a new district so as to remove a judge from his office during the term for which he was elected. Writs of error and appeal lie from the circuit court to the supreme court.

In each organized county in Washington is a superior court, with one judge, elected for four years, at an annual salary of $3000. Every case submitted to a judge of the superior court must be decided by him within ninety days from date of submission, or, if a re-hearing is ordered, within ninety days of the submission upon such re-hearing. The superior court judges are required, on the first

day of November of each year, to report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court, on or before the first day of January of each year, are required to report in writing to the governor such effects and omissions in the laws as they may believe to exist. The superior court of Washington has original jurisdiction in all cases of equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to $100; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. This court has original jurisdiction in all cases and of all proceedings in which jurisdiction has not been by law vested exclusively in some other court, and it has power to naturalize foreigners. It has appellate jurisdiction in cases arising from justices' courts, and from other inferior courts in the respective counties as is prescribed by law. It is always open, except on non-judicial days, and its process extends to all parts of the State. The superior courts and their judges have power to issue writs of *mandamus*, *quo warranto*, review, *certorari*, prohibition, and writs of *habeas corpus*, as in the circuit courts of South Dakota. The judge of a superior court may preside in any county at the request of the superior judge of that county, and it is his duty to preside there if required so to do by the governor.

The district courts in North Dakota are six in number, each district judge being a resident of his district, and elected for four years. He is also required to be learned in the law, a resident of his district for two years previous to his elec-

tion, and at least twenty-five years of age. The jurisdiction, powers, and provisions in the constitution respecting the district courts of North Dakota are almost identical with similar provisions for the circuit courts of South Dakota; and in the Montana constitution its provision for district courts is almost identical with the provisions for superior courts in the State of Washington. It is in these middle courts in the four States that the greater part of the judicial business of the States will be determined; and with respect to the organization of these courts, their powers, and their jurisdiction, the States go in pairs—North Dakota and South Dakota, Montana and Washington. North Dakota provides for "Tribunals of Conciliation," to be established with powers and duties as prescribed by law; but such tribunals, when sitting as courts, have no power to render judgment obligatory on the parties unless they voluntarily submit their matters and differences, and agree to abide the judgment of such tribunals. Montana and Washington, in constitutional language almost the same, provide that in civil actions in district or superior courts, the case may be tried by a judge, *pro tempore*, who must be a member of the bar of the State, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case. The order, judgment, or decree of such a judge has the same force as if rendered by the court with the regular judge presiding. Washington also makes special provision for the appointment of court commissioners, by the judge of the superior court, to perform the duties of a judge at chambers, subject to revision of the superior court judge.

The Dakotas provide for county courts, the electors in each county choosing a county judge for the term of two years. These courts have original jurisdiction in probate and testamentary matters. In South Dakota these courts have civil and criminal jurisdiction conferred by law, providing that their jurisdiction in any case where the debt, damage, claim, or value involved is $1000 or more, except

in probate matters, ceases. They also have jurisdiction in criminal cases below the grade of felony. Writs of error or appeal are allowed from the county court to the circuit or the supreme court, as the law provides. In North Dakota a peculiar provision obtains. Whenever the voters of any county having a population of two thousand or over, decide by a majority vote that they desire the jurisdiction of the county court increased above that limited by the constitution of the State, then the county court in the county so electing shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed $1000, and in all criminal actions below the grade of felony. In case the electors in a county make this judicial change, the jurisdiction in cases of misdemeanors arising under State laws which may have been conferred upon police magistrates ceases in that county. The qualifications of the judge in the county court whose jurisdiction is thus increased are to be the same as those of the district judge, except that he shall be a resident of the county at the time of his election. The jurisdiction so changed continues until otherwise provided by act of the legislature.

In Washington the jurisdiction of the justice of the peace is fixed by the legislature, but it must "not trench upon the jurisdiction of superior or other courts of record." In Montana the electors in each township elect at least two justices of the peace for the term of two years. In each of the four States the jurisdiction of the justice is fixed by the legislature. In Montana they have no jurisdiction in any case where the debt, damage, claim, or value of the property involved exceeds the sum of $300; in the Dakotas, $200. They have no jurisdiction in any case in Montana involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor in cases of equity, nor to issue writs already specifically named in connection with the superior courts in that State; nor to naturalize foreigners, nor in cases of felony, except

as examining courts or for preliminary hearings. Cases below the grade of felony may be brought into these courts by information; appeals are allowed to the district courts. With slight modifications, but not with essential differences, the justices' courts of the two Dakotas are constituted similarly to those of Montana. Police and municipal courts are provided in each of the constitutions after the type of the justices' courts.

Each county in Montana elects a county attorney for two years; South Dakota and North Dakota also have a county officer of the same title and duties. Each State provides for an attorney-general. Each State also modifies the provision for a jury from that common to the constitutions of the American States. The right to a jury trial is guaranteed in each constitution; but the organization of the jury itself is somewhat changed from the traditional type. Washington provides for a jury of any number less than twelve in courts not of record, *i. e.*, in courts inferior to the superior court; and that a verdict may be given by nine or more jurors in civil cases in any court of record, and in such cases the jury may be waived with consent of parties. The constitution further provides that no grand jury shall be drawn or summoned in any county except the superior judge of the county shall order one. Montana provides for a grand jury of seven persons, of whom five must concur to find a verdict; but the grand jury, as in Washington, shall be summoned only at the discretion of the district judge. North Dakota provides for a jury in civil cases in courts not of record, *i. e.*, in courts inferior to its district courts, of less than twelve men; and the constitution of South Dakota provides for a jury of less than twelve in any court not a court of record, *i. e.*, in courts inferior to its circuit courts; and the decisions, in civil cases, may be made by three-fourths of the jury in any court.

South Dakota includes a unique provision relative to the political candidacy of judges during their terms of

office, declaring that the judges of the supreme and circuit courts are ineligible to any other than a judicial office during the terms for which they were elected judges, and that all votes given by the legislature or the people for them as candidates for any other than a judicial office shall be void.

The governor, the administrative officers of the State, and the judges of courts of record for malfeasance in office are liable to impeachment by the house of representatives of the respective States, the senate sitting as a court of impeachment. All officers not subject to impeachment under the constitution, may be removed, "as provided by law."

The qualifications of the elector and the provisions concerning elections in these States are essentially uniform in character. In the Dakotas an elector is required to be a citizen of the United States, or, if a person of foreign birth, to be one who has declared his intention to become a citizen conformably to the naturalization laws of the United States; in North Dakota, a civilized person of Indian descent who has severed his tribal relations two years next preceding the election at which he desires to vote may become an elector. An elector is also required in these two States to be twenty-one years of age, or more, to have resided in the United States one year (S. D.), in the State one year (N. D.) or six months (S. D.), in the county thirty days (S. D.), and in the precinct where he desires to vote ninety days (N. D.), or ten days (S. D.), preceding any election. The legislatures of these two States are empowered to subject to the voters of the State at a general election the question of extending the suffrage to all persons, otherwise qualified, without regard to sex. Washington requires the elector to be a citizen of the United States, a resident of the State one year, of the county ninety days, and in the city, town, ward, or precinct thirty days preceding the election at which he wishes to vote. Indians not taxed can never be be allowed the elective franchise. Montana requires the

elector to be twenty-one years of age, or more, a citizen of the United States, a resident of the State one year, and of the polling precinct as required by law. In the Dakotas and in Montana any woman, qualified by age and residence, may vote at any school election and be eligible to a school office. The female suffrage clause submitted separately to the electors of Washington at the time of the election to ratify the constitution, was defeated.

The articles on "Education," "School Lands," and "State Institutions" comprise munificent provisions for a system of education in each State, consisting of free public schools, normal schools, technical schools, colleges, and universities. The generous gift of Congress has been already estimated in value; the legislatures are empowered to supplement that source of income for schools by taxation. In each State the school fund is made inviolate, and any loss of the school fund is to be replaced by the State, with interest. Elaborate provision is made for the sale of the school lands, by stating the term of years, and other conditions according to which they may be sold. Instruction in any State school is to be undenominational, and no money can be appropriated by the legislature for sectarian purposes. In North Dakota, the superintendent of public instruction, the governor, the attorney-general, the secretary of State, and the State auditor constitute a commission called the "Board of University and School Lands," having control of the appraisement, sale, rental, and disposal of all school and university lands, and directing the investment of the funds arising from such sales. The county superintendent of common schools, the chairman of the county board, and the county auditor constitute boards of appraisal; and under the authority of the State board of university and school lands, they appraise all school lands, within their respective counties, and from time to time recommend such lands for sale, designating as for sale the most valuable lands. The legislature is empowered to lease school lands, but all rents must be

paid in advance. The moneys of the permanent school fund can be invested in the United States bonds, State bonds, or in farm mortgages in the State, the face of the mortgage not to exceed one-third of the value of the mortgaged property as valued by the appraisers of school lands. Similar provisions obtain in the constitutions of the three remaining States. A significant provision in the constitution of South Dakota requires that the science of mining and metallurgy be taught in at least one of the State institutions of learning: a suggestion of the popular apprehension of the industrial and economic demands of the times. The higher schools in each of the States are specifically cared for and adequately endowed: it remains for experience to show whether the people of these great States create a school system, from primary school to university, which in its results will adequately represent wisely used privileges made possible by such munificent endowments. Recent movements and ideas in education found a generous response in the provision by the North Dakota convention for a "School of Manual Training" and one of "Forestry," the former with a grant of forty thousand acres. These two institutions are the first of their kind founded in America by a constitutional convention.

The foundation of State institutions, such as reform schools, asylums, hospitals, and soldiers' homes have already been referred to.

Local government in the States is committed to counties, to townships, and to cities. The Dakotas are substantially alike in their county officers, which are those of auditor, treasurer, sheriff, clerk of district court, probate judge, register of deeds, county attorney, superintendent of schools, surveyor, coroner, and county commissioners (three to five in number, according to population), each elected for a term of two years. The counties of the Dakotas are generally of regular form, and nearly equal each to the other in area—the counties west of the Missouri being somewhat larger than those east of that river.

Each county is composed of townships six miles square, according to the public surveys of the public domain. The regularity of the counties of the Dakotas imparts to a county map of either of those States an appearance like that of a checker-board. With the exception of two counties in Montana—Dawson and Choteau—and of three in Washington—Jefferson, Skagit, and Whatoom, two boundaries of each of which three are irregular—the States of Montana and Washington are subdivided as irregularly as the State of Virginia. The Dakotas and Washington provide in their constitutions for county or township local government as the electors may decide at a regular election. Counties, cities, towns, or townships are permitted to enforce local laws not in conflict with general laws. Such laws are principally laws of police, or laws incident to the administration of civil government in the locality. In each State the chief repository of county authority is the board of county commissioners, similar to that board in Pennsylvania. Sheriffs and county treasurers are not to serve for more than four years (two terms) in succession. It may be said that the system of local government in the new States was introduced before the admission of the States—was carried into the Territories by the settlers from Eastern States, and corresponds essentially with that in force in New York and Wisconsin. The constitutions provide in detail for local government and for the incorporation of cities: the four States present a general harmony in their system of local government and their civil organization illustrates the modified "town" of New England. The people, as the four constitutions repeatedly provide, are at liberty to modify their local government from the county to the township system, as they may elect.

The absence of populous cities in the new States probably explains the meagre provision concerning municipal government in the four constitutions. The contrast in the length of the articles on "Municipal Corporations"

and "Corporations not Municipal" shows forcibly the greater importance in the opinion of the several conventions of the latter subject, and illustrate with equal force the economic importance of railroads, telegraph lines, trusts, and telephone lines, and the influence of the owners of these corporations in the States. The article on "Municipal Corporations" in the South Dakota constitution consists of three clauses; in the North Dakota constitution, of one; in the Washington constitution, of one; and in the Montana constitution, of six sections, not one of which is specifically about municipalities, and the last section of which only mentions "municipal officers," with no provision for city government. The organization and government of the cities of the future in these States are left to be provided for by law, Montana briefly stating that moneys raised by law in any city "shall not be diverted to any other purpose except by authority of law," a provision also of the South Dakota constitution. Washington makes a unique provision for the chartering of cities of twenty thousand inhabitants: "Any city containing a population of twenty thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the constitution and laws of this State, and for such purpose the legislative authority of such city may cause an election to be had, at which election there shall be chosen by the qualified electors of said city fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election and qualified electors, whose duty it shall be to convene within ten days after their election and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of the qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, and all special laws inconsistent with such charter. Said

proposed charter shall be published in two daily newspapers published in said city for at least thirty days prior to the day of submitting the same to the electors for their approval." The anxiety of the convention to give ultimate expression to the popular mind is expressed in the concluding sentence of the clause: "In submitting any such charter, or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others." South Dakota, mindful of municipal evils in some portions of the Eastern States, provides that no street passenger railway or telegraph or telephone line shall be constructed within the limits of any village, town, or city without the consent of its local authorities; an inadequate provision against the proclivity of city councils to "sell out" the privileges of the town to a rich corporation, repeatedly done in American cities. But the absence of lengthy constitutional provisions on municipal corporations from these constitutions is, doubtless, an indication of the wisdom of their framers, who put upon the State legislatures the responsibility of enacting just laws for the organization and government of cities, as circumstances may dictate. The inhibition of special legislation will probably result, as is now intimated in the South Dakota provision for a classification of cities into not more than four classes, in municipal legislation not unlike that in Pennsylvania under the constitution of 1873.

In contrast with the general and somewhat indefinite provisions in these constitutions concerning municipalities, are the elaborate articles on "Corporations other than Municipal," which, considered in detail, are a compendium of present corporation law, written by popular sentiment. The article in the South Dakota constitution includes nineteen sections; in the North Dakota constitution, seventeen sections; in the Montana constitution, twenty sections; and in the constitution of Washington, twenty-two sections. In addition to these specific sections under

the appropriate article, each constitution contains other clauses under other headings which refer directly or indirectly to such corporations. The reader of these constitutions is almost persuaded that these new States, at the time of their organization, were in the grasp of powerful corporations, from which each was struggling to get free. The future historian of the United States will find here a testimony to the influence of such corporations in this country, in its frontier regions, at the close of the first century of the Republic.

The constitutions define corporations as "all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships." The organization of such corporations, their relations to the State and to each other are specifically provided for. Organized under "general laws," these corporations are to be composed of members or shareholders who, in choosing their directors, may cast the whole number of their votes, individually, for one candidate or distribute them upon two or more candidates, as the shareholder may prefer, a provision common to the Dakota constitutions. No corporation can issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness is declared void. Nor can the stock be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, nor without due and previous notice of the stock as may be prescribed by law, Montana requiring thirty days' notice to stockholders. In this State also, persons, companies, or corporations are forbidden to require of their servants or employés, as a condition of their employment, or for any other reason, any contract or agreement whereby the employer is released or relieved from liability or responsibility on account of personal injuries received by such servants or employés while in the

service of such employers or their agents; such contracts being declared in the constitution to be null and void.

The charters or grants made to corporations which had a *bona fide* organization at the time of admission of the States, and a known place of business in the State, were declared to be in force. All corporations were required to accept the constitution of the State in which they operated, and Montana required that the acceptance be filed in the office of the secretary of State. The exercise of the right of eminent domain by corporations in either of the States can never be abridged or construed so as to prevent the legislature from taking the property and franchises of incorporated companies, and subject them to public use the same as the property of individuals. Foreign corporations are required, if they do business within the State, to have a known place of business, and an agent there, upon whom legal processes may be served if necessary; and Washington provides against the discrimination by the legislature in favor of foreign corporations over those doing business wholly within the State. A corporation can engage only in that business described definitely in its charter, and South Dakota adds, "nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business." This State also provides for the revocation of the charter of a corporation by the legislature "whenever in their opinion it may become injurious to the citizens of this State, in such a manner, however, that no injustice be done to the incorporators." In North Dakota every railroad corporation doing business in the State is required to keep for public inspection books in which are recorded the amount of its capital stock subscribed, by whom, the names of the stockholders, the amount of stock paid in and by whom, the transfers of stocks, the amount of assets and liabilities of the corporation, and the place of residence of its officers. To the auditor of the State the directors of the road are required to make an annual report, under oath, of all the acts and

doings of the road. Foreign railroad corporations are exempted from compliance with the constitutional requisition. It is not improbable that railroads doing business within the State may all be organized as "foreign corporations," rather than subject themselves to the inquisitorial powers of this clause.

In relation to the State, such corporations as railroads and canals, telegraph and telephone companies, and other transportation companies, are delared to be common carriers subject to legislative control. The Washington constitution explicitly provides, in this relation, that any corporation or association organized as a common carrier, under the laws of the State, has the right to connect at the State line with railroads of other States, whether the railroad be yet built or not; the right also to intersect, cross, or connect with any other railroad; and when such railroads are of the same or of similar gauge, they must at all crossings and at all points, where a railroad begins or terminates at or near any other railroad, form proper connections, so that the cars of any such railroad companies may be speedily transferred from one railroad to another. All railroad companies must receive and transport each the other's passengers, tonnage, and cars without delay or discrimination. Similar provisions are introduced into the constitutions of the three remaining States. Against the consolidation of corporations, such as railroads, telephone and telegraph lines, and canals, the constitutions are plain. Such consolidation is forbidden, except after notice to stockholders, "as prescribed by law." Rolling stock is declared to be personal property, and liable to sale and execution in the same manner as the personal property of individuals. The relation of the State to corporations is that of the State to individuals, according to these constitutions, and the evident purpose of the conventions was to make this relation clear. The prevailing opinion among the delegates, who expressed the popular mind, was that hitherto, in the older States, too great privileges had been

granted to such corporations, resulting in unjust discrimination against the individual citizen. By the incorporation of such ideas into these constitutions, it follows that the relation of corporations to each other of the same kind is substantially that of individuals to individuals. One corporation is inhibited from discriminating against another. The South Dakota constitution expresses this idea in the clause requiring every railroad company operating within the State to "receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination," a provision embodied in the constitution of each of the States. South Dakota further delares that the legislature shall pass laws to correct abuses and prevent discrimination and extortion in the rates of freight and passenger traffic on the different railroads in the State. The influence of the Interstate Commerce Act is conspicuous in each of the constitutions.

The protection of the rights of the individual, by the South Dakota constitution is further illustrated in the prohibition on the legislature from depriving any person of an appeal from any preliminary assessment of damages against any kind of a corporation, or against individuals, made by viewers. A jury trial shall decide the damages, as in civil cases. Evidently, the influence of the Farmers' Alliance in the Dakotas was to protect themselves from the aggressive acts of corporations incident to the construction of railroads, highways, or municipal improvements. Pursuing the plan of considering corporations as no more to be favored by the State than individuals, Washington provides that the State cannot loan its credit, nor subscribe to, nor be interested in the stock of any company, association, or corporation.

Washington, mindful of serious bank failures in the older States, makes any bank officer who receives deposits after he has knowledge of the insolvency of his bank, individually responsible for such deposits. Montana makes no reference to banking. The Dakotas provide, in common

language, that if a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the State of all bills or paper credit designed to circulate as money, and require ample security for such currency to be deposited with the State treasurer for the redemption of such notes or bills; South Dakota adds, "in the approved securities of the State or of the United States, to be rated at 10 per centum below their par value; and in case of their depreciation, the deficiency shall be made good by depositing additional securities." South Dakota further provides that such banks "cease all banking operations within twenty years of organization," unless reorganized, and also that the shareholders in such banks be held individually responsible for all contracts and debts of such corporations to the extent of the amount of their stock at its par value, in addition to the amount invested by them in the stock, and that the liability continue for one year after any transfer or sale of stock by any stockholder.

No reference is made in the Dakota constitutions to trusts. Montana and Washington, with a larger experience of the meaning of the term, include in their constitutions the clause, almost identical in language, that no corporation, stock company, person, or association of persons shall directly or indirectly combine or form what is known as a trust, or make any contract with any person or persons, corporation or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce or of the product of the soil for consumption by the people, under penalty of law, forfeiture of franchises, or of the right to carry on business within the State. It will be seen that the term "trust" in these two constitutions is synonymous with the term "monopoly," as popularly understood, and does not apply wholly to financial corporations engaged in a general banking business.

State revenue and finance and public indebtedness are

treated at length in these constitutions. The evident purpose of the conventions in treating these subjects was to provide for an adequate revenue annually, to avoid a State debt, and to fix a low rate of taxation. South Dakota empowers its legislature to levy an annual State tax not to exceed two mills (North Dakota, four mills) on each dollar of the assessed valuation of all taxable property in the State, to be ascertained by the last assessment made for State and county purposes. If the ordinary expenses for the year exceed the income of the State for that year, the legislature in the following year causes to be collected an income sufficient to pay the deficiency and also to meet the current expenses. For paying the public debt the legislature is empowered to levy a tax annually sufficient to pay the interest and the principal of the debt within ten years, provided that this annual tax for the payment of the principal and the interest of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of taxable property. Corporations are assessed in South Dakota "as near as may be by the same methods as are provided for assessing and levying taxes on individual property," and the power to tax corporations is expressly declared to be beyond surrender or suspension by the legislature; the same provision exists in the constitutions of Washington and Montana. To this provision belongs the exception out of taxation of property belonging to schools, religious societies if used for purposes of worship, cemeteries, charitable foundations, State and United States property, and such property as is exempted by law, which in South Dakota is limited to personal property not exceeding $200 in value, and the homestead. All moneys at interest, stocks, bonds, credits, notes, and bills of all banks and bankers, and money at loan are subject expressly to a State tax "equal to that imposed on the property of individuals."

Local taxation in townships, counties, and cities is provided for in addition to taxation by the State. North

Dakota provides for a poll tax, annually levied, of not more than $1.50 on every male inhabitant of the State over twenty-one and under fifty years of age, "except paupers, idiots, insane persons, and Indians not taxed," the only mention of a poll tax in the four constitutions. Montana provides a scale of taxation: a tax of not more than three mills on each dollar of valuation as a maximum; whenever the taxable property of the State shall amount to $100,000,000 the rate shall not exceed two and one-half mills on each dollar of valuation; when it reaches $300,000,000, the rate thereafter shall never exceed one and one-half mills on each dollar of valuation, unless at a general election a majority of votes shall increase the rate. This clause in the constitution is a striking illustration of the intensely democratic character of these constitutions. In order to provide against the evils of hopeless municipal indebtedness, the Montana convention introduced the somewhat questionable provision that private property cannot be taken or sold for the corporate debts of public corporations, but the legislature is empowered, in such a case, to provide for the funding of the corporate debt. Possibly the time may come in Montana when this clause may be seen to have encouraged city indebtedness in confidence that that indebtedness will be met by the credit of the State. Were such a clause in the constitutions of some of the Eastern States, it would tempt to such indebtedness. Montana has a State board and county boards of equalization, with the duties usually attendant upon such officers: the State board consisting of the governor, the secretary of State, the State treasurer, the State auditor, and the attorney-general; the county boards are composed of the county commissioners for the respective counties. The two Dakotas make similar provisions concerning revenue and taxation, somewhat unlike the provisions in Montana and Washington, which two States are more alike in their several financial and taxation clauses than either or both of them compared with the Dakotas. The usual annual

reports are required of the several administrative and financial officers of each State, and these officers are subject to the usual securities and bonds. Public moneys, if drawing interest, accrue to the benefit of the State, and the making of profit out of them by private individuals or public officials is declared to be an offence.

The limit of State indebtedness is fixed by the constitutions at $100,000 in South Dakota and Montana, at $200,000 in North Dakota, and at $400,000 in Washington as the amount beyond which the legislature is not empowered to pass, unless in time of war to repel invasion or to suppress insurrection. Montana expressly prohibits the State from assuming the debt, or any part of the debt, of any town, city, county, or municipality. It permits a county to become indebted to the amount of 5 per centum of the value of the taxable property of the county, but limits the amount of such indebtedness to $10,000, unless the county electors vote to exceed that amount. Cities, towns, and townships are limited to 3 per centum of the taxable property within their respective jurisdictions; but the legislature is empowered to submit to the electors in municipal corporations the question of an increased debt "when such increase is necessary to construct a sewerage system or to procure a water supply for such municipality, which shall own and control said water supply, and devote the revenues derived therefrom to the payment of the debt."

A similar provision as to the limits on county, township, and city indebtedness obtains in the North Dakota constitution, and in part (as to the 5 per centum maximum) in South Dakota. All bonds issued by State, county, township, or municipal authorities contrary to these constitutional provisions are declared to be void. Each of the four States assumed its territorial debt; the territorial debt of Dakota being divided between the two Dakotas, according to the provisions of the enabling act.

The militia of the four States consists of all able-bodied male citizens residing in the States, between the ages of

eighteen and forty-five years, unless exempted from service by law. Persons having conscientious scruples against bearing arms are exempted in South Dakota, and also in Washington and in North Dakota, "provided they pay an equivalent for such exemption." The constitution of each State provides for militia officers, and for the organization of the militia "as nearly as practicable" in conformity "to the regulations for the government of the armies of the United States."

The first relic of experience may be seen in the provision common to the Montana and the Washington constitutions, but absent from the constitutions of the Dakotas, forbidding the legislatures to authorize any lottery or gift enterprise. The homestead, or a portion of it, together with an amount of personal property to be fixed by law (fixed by the constitution in South Dakota), is the subject of exemption in all the States. In South Dakota married women have all the property rights of *femmes soles*, their property not being liable for the debts of their husbands. Oaths of office, impeachments of all officials, or their removal from office, the style of legal process, the designs for the seals of the States, the organization of a bureau of labor (in Washington and in South Dakota), and the method of constitutional amendment are adequately provided for.

The method of amending or altering the constitution in Montana, Washington, and South Dakota is simpler and more direct than that in the older States. An amendment, approved by both branches of any legislature, having been duly published a required time, is to be submitted to the electors of the State at the next general election. Approval of the proposed amendments (of which the number to be proposed at one time is limited to three in Montana) by the electors, adds them to the constitution at that time in force. Any legislature in either of these three States may propose to the electors in the same manner the calling of a constitutional convention, and upon the approval

of that proposition by a majority of the electors, a new constitutional convention, equal in number of delegates to the total membership of both houses of the legislature, will be summoned at a fixed time after such an election. North Dakota, following the method for amendment more common in the older States, provides that any legislature of that State, by a majority vote, may propose amendments to the constitution, which shall be entered upon the journals of the two houses and referred to the next legislature, which, upon a majority vote so to do, shall submit the proposed amendments to the electors of the State for their ratification or disapproval. In each of the States provision is made for the submission of separate amendments to the electors for their approval or disapproval. It is possible, therefore, for three of these States to have a new constitution every three years. At the election in October, 1889, the Dakotas and Washington conventions submitted, as separate articles, a clause prohibiting the manufacture, sale, gift, or importation into the State of any intoxicating liquors. Washington also submitted in the same manner an article in favor of Woman Suffrage, and South Dakota one providing for minority representation.

Provision was made in each constitution for the status of all cases at law in the territorial courts, continuing the standing of parties and securing justice under the State judiciary, which became the successor to the territorial system of courts, save in such cases as were to be tried in the courts of the United States. In the compact setting forth the relation of the new States to the United States, the enabling act was followed, and the Constitution of the United States, and the laws and treaties made under it, were declared to be the supreme law of the land.

The framing of four State constitutions, in convention contemporaneously, essentially alike in their general character, and in many important articles identical, is a remark-

able evidence of the persistency of common civil principles and opinions among the people of the United States.[1]

In a comparison between these recent constitutions and the earlier constitutions of the States east of the Dakotas, it may be said that the general features of the constitutions of the new States resemble the general features of the more than one hundred and thirty State constitutions framed in this country before them. But a comparison so general is almost worthless without pursuing it into a general comparison of details. The division of government into legislative, executive, and judiciary is common to all the American constitutions framed in the eighteenth century, and no principle in government seems better settled than the principle that the definition of tripartite government should be as distinct as possible. In the constitution of Massachusetts of 1780, yet in force, the only surviving State constitution of the last century, this distinction in civil functions is clearly stated, and in all the constitutions

[1] On the second Tuesday of October, 1889, the electors in each of these States ratified the constitution submitted to them by the constitutional convention. The four constitutions were adopted. The article on prohibition, submitted separately in the Dakotas, was adopted in both; the article providing for minority representation in South Dakota was rejected by the electors; the two Dakotas were admitted into the Union at the same moment, November 2, 1889. In North Dakota the official report of the vote shows that 27,441 votes were given for the constitution and 8107 against it, being a majority in favor of the constitution of 19,334. For the prohibitory amendment to that constitution were given 18,552 votes, and against the amendment 17,393 votes, being a majority of 1159 votes in favor of prohibition. In South Dakota the official report of the number of votes cast shows 70,131 for the constitution and 3267 against it. The great majority in favor of the new constitution in this State is partly explained by the fact that the constitution of 1889 was substantially the Sioux Falls constitution of 1885, which was familiar to the people of the State, and accepted by them in 1885 by a heavy majority. In Montana the vote in favor of the constitution was 24,676; against the constitution, 2274. The large majority in Montana is partly explained in the same manner as in South Dakota; the Montana constitution of 1884, of which the constitution of 1889 was in many respects a copy, was acceptable to the electors of that State. Each convention assembled July 4, 1889; that of South Dakota adjourned, *sine die*, August 5th; that of North Dakota and of Montana, August 17th; and that of Washington, August 22d. Montana was admitted into the Union by proclamation of the President November 8th, and Washington, November 11, 1889. Dakota had sought admission three times, Montana twice.

which have been framed from Boston to Olympia this civil differentiation has obtained, not, however, with equal definition in all. There seem to be four rather than three dimensions to government, the fourth dimension springing necessarily out of the relations between the other three, being the dimension or department of administration. This fourth function is in conformity with the history of the growth of government in this country. During the seventeenth and eighteenth centuries the struggle in this country was to determine the principles of government. This struggle was the civil characteristic of the colonial period, and it closed with the era of constitution-making from 1776 to 1789, during which time the first State constitutions and the present national Constitution were framed. But before the making of these constitutions there was the long-continued labor to work out the foundations of government. This foundation, as worked out during the last century in America, finds expression first in the general principles set forth in Bills of Rights, which formulate accepted principles of civil relations. These Bills of Rights are the characteristics of later colonial life, and they appear in all the colonies in similar form, style, and language just before the outbreak of the Revolution. But these general principles were too vague for a practical foundation of government, and the early constitution-makers merely used these Bills of Rights as prefaces to detailed plans of government which we are accustomed to call the constitutions of the States. In these detailed plans precedent was closely followed, and the traditional threefold division of governmental powers and functions was observed. There was one element in the conduct of government in which the Americans of the last century failed to see that practical power and significance which is now clear to statesmen—the element of administration. Nor did the European governments approach any nearer than did the Americans to an adequate understanding of administrative law. After a century of experience in the conduct

of representative government in this country the function of administration is more clearly defined. The earlier constitutions of this century hint at this definition or differentiation of a new element in government, or, to speak more accurately, at this discovery of a permanent element in government; and since 1825 the various State constitutions illustrate the recognition of this function separate from the legislative, the executive, and the judiciary. This recognition is apparent in the Northern States rather than in the Southern, because the Northern States revised their constitutions or framed new ones oftener than did the Southern States. This revision of constitution-making in the North was chiefly due to migration and immigration in the North, and the constant civil activity incident to the organization of many new civil units, new Territories and new States.

It is one labor to lay down the principles of representative government; it is another labor to administer these principles. These two labors are distinct, as experience in this country has shown. The administration of government in this country is popularly supposed to be the triumph, for the time being, of a political party, but our history, both State and national, will correct this popular supposition. One instance in national history will suffice: the administration of national affairs when Jefferson succeeded Adams in 1801. The party of Jefferson did not introduce a new administration of the government; it found that to a great degree it was impracticable and inexpedient to change the methods of administration already in vogue. Jefferson's reputed saying of the Federalists left over in office applied, perhaps, more truly to the principles of Federal administration: "Few die and none resign." To introduce an entirely new scheme of running the government would, in Jefferson's time as it would now, upset most disastrously the stability of business, the execution of the laws, and the obligation of contracts. The administration of government has been found to be a science and

its course a course of principles, just as the course of legislation or of judicial decisions follows a system based on recognized principles. Gradually, therefore, there has come into constitutional form a clearer idea of the permanent element of administration, and in the recent State constitutions this fourth department of government is more clearly defined than ever before in this country. In other words, the people are coming to believe that there is a permanent system of administration possible, and they have been forced to this conclusion by the fearful expense of administrative experiments which have been made in all the States, and often in the national government, during the century. But it has taken nearly a hundred years to learn the alphabet of this lesson. The constitutions of the four new States may well be examined with reference to the significant changes which they present in comparison with the constitutions of the last century. The summary of the case may be stated something in this form: it is agreed how representative government should be constituted; it is partially agreed how representative government must be administered. These new constitutions, like those which have come since 1860 in various parts of the Union, approach a definition of the administrative department of government by curtailing the other departments. Limits are set on the executive, on the legislative, and on the judiciary. This limitation means practically that if special legislation is prohibited under eighty sections or on eighty subjects, the legislature by such limitation is compelled to pursue a system, though rather a loose system, of prescribed administration. If the executive is forbidden to exercise some functions hitherto commonly exercised by the executive of a State, this limitation implies that to the extent of the limitation he must follow an administrative system, although that system be still loosely organized. If the judiciary is compelled by constitutional limitations to pursue whatever course, either by limitation of terms, tenures, methods of trial, jury systems, or juris-

diction, that limitation is practically the introduction of an administrative system into the scheme of government. These limitations on the three ancient departments of government are only strong indications of the change through which constitution-making is passing; the creation of a body of administrative officers with defined duties, however illy defined, is a further evidence of the tendency to recognize the fourth department of government. In politics the recognition of this fourth department finds expression in the civil service, whose reform implies a fixed administration of affairs. In other words, the people are learning that it is easier and cheaper to change the governor, the members of the legislature, and the judges, than to change the body of administrative public servants who practically do the work of government. Without doubt we are tending to a condition of permanency in the administrative force in government, and we are defining with increasing care the duties of the officials in the three ancient departments. The union of so many States has compelled this change, and it will eventually work out a clearly defined administrative department of government in every State constitution. The compulsory change is due, more than to any other cause, to the confusing increase of State laws, of State court decisions, and confusion of methods of execution of the laws.

The popular feeling has long been expressed in such sayings as "We want better execution of the laws, not more laws;" "We want honest and capable administration of government irrespective of party." I think that the four new constitutions, if examined critically in comparison with the earlier constitutions of which they are the historical outgrowth, will stand forth on the witness-stand of the high court of our constitutional history and give evidence to the effort of the four conventions to express the demand of the American people for a closer definition of the administrative element in government.

In attempting to define this fourth department clearly or

loosely, the framers of these four constitutions have gone to great length of clauses and words. These instruments are exceedingly long They approach a code of laws, rather than a *résumé* of governmental principles. They will prove unwieldy in practical administration, because they attempt to prepare the State for a great number of detailed labors. The framers seem to have thought that the governments would at best be intrusted to untrustworthy officials, and that it was wise, if not necessary, to set forth the details of State government even to the definition of such terms as monopolies and railroads. This phase of the constitutions is not beyond explanation. The last word has not been said on government, and until it is said there will be much of verbiage in constitutions. A constitution aims to be a chart, based upon a large amount of experience in the conduct of government. But a constitution is not intended to teach a system of legislation, or to discuss passing problems in transportation. If any person will read the first constitutions of the States he will discover that the details of religious and property qualifications found in them—the definitions of religion and the detailed references to incidents peculiar to the period when these constitutions were formed—soon passed out of these constitutions; they are of historical interest, but they were not an essential part of a State constitution. So in the future, and in the near future, will drop out of these new constitutions the detailed and special definitions which can be traced plainly to the feelings of members of the conventions against railroads, monopolies, and trusts. The economic aspects of these constitutions finds here a point of view, but the point of view will, in the end, prove historical.

The modifications of the jury system, the permit in the constitution for the abolition of such offices in the State as that of lieutenant-governor, auditor, and commissioner of public lands; the peculiar attitude of the conventions toward the judiciary, in suggesting the discredit into which

our State judiciary has fallen, and the evident effort of the conventions to reduce law to a so-called common-sense system by the abolition of technicalities and the possible elevation of "farmer lawyers" to the bench; the curious provision in North Dakota by which a popular vote may change the jurisdiction of the county court; the freedom of choice in organizing local government; the democracy which may rule in determining a city's charter in Washington; the anxious effort of the conventions to limit the indebtedness of the States and to prevent a waste of public funds in the future, are special features each of which has its history in a long series of abuses in the Eastern States. As is characteristic of every convention of men assembled for whatever purpose, their finished labors always illustrate some specific effort to correct some particular abuse with which some of the members were familiar or from which they had suffered. It must always follow in a representative democracy that such detailed masses of reform will appear in the grand result. I need only cite the long and bitter debate in the convention of 1787 over that clause in the national Constitution which allows Congress to levy taxes on imported slaves; or on the power of Congress to lay import duties. Subsequent events clearly showed that the right of taxation on imports as a right to levy a tax never troubled the country: the disputes arose on how to levy the tax and on what to impose it. The whole clause turned for definition on the administration of the government. Whatever party was in power, it took advantage of the clause; the manner of laying hold of it became a plank in party platforms.

So in the administration of these new constitutions: much that gave the conventions great anxiety will become problems of administration. The constitution will take meaning from such administration, not from any set of principles which the convention sought to lay down in the legislative department of their new State government. In this connection lies the pertinency of the remarks of Judge

Cooley before the Bismarck Convention, on the 17th of July: "In your constitution-making remember that times change, that men change, that new things are invented, new devices, new schemes, new plans, new uses of corporate power. And that thing is going to go on hereafter for all time, and if that period should ever come which we speak of as the millennium, I still expect that the same thing will continue to go on there, and even in the millenium people will be studying ways whereby by means of corporate power they can circumvent their neighbors. Don't, in your constitution-making, legislate too much. In your constitution you are tying the hands of the people. Don't do that to any such extent as to prevent the legislature hereafter from meeting all evils that may be within the reach of proper legislation. Leave something for them. Take care to put proper restrictions upon them, but at the same time leave what properly belongs to the field of legislation, to the legislature of the future. You have got to trust somebody in the future, and it is right and proper that each department of government should be trusted to perform its legitimate function."

The influence of early education on the members of the conventions is apparent in their work. The extreme democracy, I might say, which characterizes these constitutions on the whole, reflects the effort of the conventions to escape some of the evils which hang about all State governments, the principal one of which is the taking of government on trust. The conventions evidently wished to say the last word, and to compel so far as they could the course of future affairs in their States. But in this effort they undertook questionable labors, and the history of these subsequent events will doubtless be a history of events now undreamed of by the men who framed these constitutions. No evidence is stronger in this country of the suspicion that State officials cannot be trusted than is afforded by these four constitutions. From this prevailing sentiment there will be a counter-revolution. It will come

through politics, not through formally elected constitutional conventions. The people will ultimately insist upon capable administrations of public affairs, irrespective of the verbiage of State constitutions. It is impossible that in a country possessing so much practical skill and common sense the essential function of administration will long remain indistinct. It is in the clear understanding of how to run a government that the safety of a government depends. Without doubt the typical constitution has been nearly three-quarters made, but the finishing-stroke in the theory of its construction is now being given. Every effort toward a definition of governmental administration aids in the stroke, and these four conventions have greatly aided. To criticise the work of these earnest men is easier than to appreciate the significance of their work. To appreciate their labor requires not only a knowledge of the problems which they had to face, but also a knowledge of the solution of similar problems in the North for nearly two centuries. Economic conditions regulate the making of a State constitution whether or not the members of the constitutional convention ever heard of Adam Smith or of Mill. From the *personnel* of these conventions we are able to conclude that they represented many communities. The framers of the constitutions were more than average men. They were mostly young men who had not experienced constitutional evils in other States, but they were men who had examined, however cursorily, the provisions of other constitutions. But after considering all these sources of their knowledge, one is compelled to admit that the constitutions, in their elaborate details, reflect local rather than general interests. Every first State constitution contains these local *indicia:* it is only after long State experience that such particulars disappear. When these four States frame their next constitutions there will doubtless appear local interests amidst provisions of a general character, but the proportion will be less than in the present constitutions. The practical administration of these new gov-

ernments will compel the correction of faults. But most significant in the constitutions themselves is the recognition, expressed or implied, of the fourth department of representative government, the department of administration. This recognition is in keeping with the entire political tendency of American constitution-making during the present century. Our fathers settled or tried to settle on what principles government should be founded: we are settling or trying to settle on what principles government shall be administered.

FRANCIS NEWTON THORPE.

School of American History,
University of Pennsylvania.